

TITLE 92 - NEBRASKA DEPARTMENT OF EDUCATION  
CHAPTER 28 - PROFESSIONAL PRACTICES INVESTIGATIONS AND NONPUBLIC  
CERTIFICATE HEARINGS

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001 General Information

001.01 Statutory Authority. Sections 79-1282 and 79-328(5)(j) of the Revised Statutes of Nebraska (R.R.S.) provide the basis for the State Board of Education to revoke or suspend any teacher, administrator, or special services counseling certificate for just cause. Section 79-1283 R.R.S. authorizes the State Board of Education (Board) to request the Professional Practices Commission (Commission) to conduct hearings and make recommendations concerning violations of standards of professional ethics and practices by holders of public school certificates. Section 79-1283 R.R.S. also authorizes the Board to employ hearing officers to conduct hearings and make recommendations regarding violations of a similar nature by holders of nonpublic school certificates.

001.02 Scope and Application of this Chapter. This chapter governs investigations and hearings involving complaints against holders of teaching, administrative, or special services counseling certificates issued pursuant to Title 92, Nebraska Administrative Code (NAC), Chapter 21, for alleged violations of standards of professional ethics and practices applicable to such certificated individuals as contained in 92 NAC 27. This chapter is not applicable to noncertificated individuals monitoring instruction in exempt schools under 92 NAC 13.

001.03 Related Regulations. Standards of professional practices and ethics for holders of both public and nonpublic certificates are contained in 92 NAC 27. Procedures for review of hearing recommendations under this chapter (for nonpublic school certificate holders) and under 95 NAC 1 (for public school certificate holders), are contained in 92 NAC 29. Regulations for the issuance of public school and nonpublic school certificates are contained in 92 NAC 21. Procedures for the reinstatement of a public school certificate are contained in 95 NAC 2. Procedures for the reinstatement of a nonpublic school certificate are contained in 92 NAC 29.

002 Definitions. As used in this chapter:

002.01 Administrator shall mean any holder of a public or nonpublic certificate for administration or supervision issued pursuant to 92 NAC 21.

002.02 Admonishment shall mean a private sanction to a certificate holder that further unprofessional or unethical conduct may result in more serious action, including the suspension or revocation of a certificate. This sanction may be imposed by the Commissioner, Commission, or Board.

002.03 Board shall mean the State Board of Education.

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002.04 Certificated person shall mean any holder of a certificate issued pursuant to 92 NAC 21.

002.05 Commission shall mean the Nebraska Professional Practices Commission.

002.06 Commissioner shall mean the Nebraska State Commissioner of Education.

002.07 Complainant shall mean any individual(s) or organization(s) filing a complaint with the Commissioner.

002.08 Department shall mean the Nebraska State Department of Education, which is comprised of the Board and the Commissioner.

002.09 Petitioner shall mean the Commissioner.

002.10 Reprimand shall mean a public sanction criticizing or rebuking a certificate holder for unprofessional or unethical conduct. This sanction may be imposed by the Commissioner, Commission, or Board.

002.11 Respondent shall mean any individual(s) who shall be charged in a complaint or petition with allegedly violating standards of professional ethics or practices as contained in 92 NAC 27.

002.12 Revocation shall mean a public sanction withdrawing or canceling a certificate holder's certificate for a certain period of time. At the expiration of the revocation period, the former certificate holder may apply for reinstatement in accordance with 92 NAC 29. This sanction may be imposed by the Board.

002.13 Special services counselor shall mean any person holding a public or nonpublic special services counseling certificate issued pursuant to 92 NAC 21.

002.14 Suspension shall mean a public sanction withdrawing or canceling a certificate holder's certificate for a certain period of time. The certificate is automatically reinstated at the expiration of the suspension period if it has not expired during the period of suspension. This sanction may be imposed by the Board.

002.15 Teacher shall mean any holder of a public or nonpublic certificate for teaching issued pursuant to 92 NAC 21.

003 Complaints and Investigations for Holders of Public or Nonpublic School Certificates

003.01 Complaint Procedures. Anyone having an interest in, or information about, an alleged violation of professional practices standards relating to

public or nonpublic certificate holders, as contained in 92 NAC 27, may file a signed, written complaint with the Commissioner. The complainant shall use the form prescribed by the Board, a sample of which is included as Appendix A.

003.02 Contents of Complaint. The complaint shall contain the following information:

003.02A The full name, address, and telephone number of the complainant;

003.02B The full name, address, and telephone number, if known, of the respondent;

003.02C A concise statement of the facts which the complainant believes constitute a violation of professional ethics and practices; and

003.02D The full names, addresses, and telephone numbers of any witnesses able to testify as to the facts alleged.

003.03 Distribution of Complaint. Within fifteen (15) days of the filing of a complaint, the Commissioner shall serve a copy of the complaint on the certificated person by certified mail, return receipt requested to the last known address of the person. If service cannot be completed in this manner, it may be accomplished in accordance with state law regarding service of summons.

003.04 Response to Complaint. The certificated person may, within fifteen (15) days of receipt of the complaint, request in writing the opportunity to informally present a position or defense respecting the allegations in the complaint. This position or defense may be submitted in writing, but a personal conference with an investigator assigned by the Commissioner may be had as a matter of right if the written request is made within fifteen (15) days of the receipt of the complaint.

003.05 Evaluation and Investigation. Upon receipt of a complaint, the Commissioner or his or her designee shall evaluate the complaint to determine if the facts alleged are sufficient to constitute a violation of 92 NAC 27. At his or her discretion, the Commissioner may assign an investigator to evaluate the complaint and may cause an investigation to be made into the circumstances surrounding the complaint.

003.05A It shall be the obligation and responsibility of the investigator to prepare a report for the consideration of the Commissioner, which report shall contain a position or defense of the respondent, if any; discuss jurisdiction; and set forth any legal arguments and authorities that appear applicable to the case. The report shall

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include a recommendation as to whether there exists legally sufficient grounds for further proceedings and a recommendation of one of the following: dismissal, further inquiry, admonishment or reprimand, or the filing of a petition.

003.05B If the complaint alleges violations of the standards of competent professional performance, then professional reviewers appointed by the Commissioner may review the professional performance of the respondent and form opinions of the quality of professional service rendered. If a petition is later filed with the Commission or the Board, such reviewers may relate such opinions by sworn testimony in any hearing where professional competency is in issue, provided that such reviewers shall qualify as expert witnesses before the hearing officer or Commission. Such testimony shall be based on the standards of competent professional performance as set forth in 92 NAC 27.

003.05C Exceptions to Report. The respondent shall be mailed a copy of the investigator's report and shall be given twelve (12) days from the date of the mailing of the report to file exceptions with the investigator. At the expiration of said time limit, the investigator shall file with the Commissioner a report in accordance with the provisions of section 003.05A of this chapter along with the respondent's exceptions, if any.

003.06 Action by the Commissioner. Following the evaluation and investigation, if any, of the complaint, the Commissioner shall take one of the following actions:

003.06A Dismiss the Complaint. Such dismissal may be accompanied by an admonishment or reprimand to the certificate holder, or other action the Commissioner deems appropriate, without a hearing, if the Commissioner determines that:

003.06A1 The alleged violation is not serious enough to warrant suspension or revocation;

003.06A2 No public interest would be served by a formal hearing;  
and

003.06A3 The certificate holder gives written acceptance of or agreement to the admonishment, reprimand, or other action.

003.06B File a petition pursuant to section 004.

003.07 Informal Disposition. The Commissioner may enter into a stipulation, settlement agreement, or other agreement to resolve any complaint or

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petition. All agreements to revoke or suspend a Nebraska school certificate shall be approved by the Board. Any modification of the sanction to be imposed by any approval authority shall void the agreement.

003.07A In public school certificate holder cases, all agreements imposing any revocation or suspension sanction shall be reviewed by the Commission and a recommendation made to the Board, if a petition has been filed with the Commission.

003.07B In nonpublic school certificate cases, the Commissioner may enter any agreement imposing sanctions, other than revocation and suspension, without further approval at any time.

003.08 Voluntary Surrender of Certificate(s). A Nebraska school certificate holder may voluntarily surrender his or her certificate(s). Any such voluntary surrender shall be treated as an indefinite revocation for purposes of publicity and reinstatement. The voluntary surrender of a person's certificate at any time after a report or complaint has been made shall not prohibit the filing of such complaint or a petition unless:

003.08A The certificate holder knowingly admits in writing the truth of such complaint or petition and waives all proceedings against him or her in connection therewith, and

003.08B Agrees to stipulated reprimand or other action deemed appropriate.

003.09 Dismissal. Any dismissal of a complaint in accordance with 003.06A shall be deemed to be a final resolution of the matter and is not subject to appeal to either the Professional Practices Commission or the Board.

003.10 Notification. The Commissioner shall notify the respondent of the Commissioner's decision.

004 Petitions

004.01 Petitions by Commissioner. A petition may be filed by the Commissioner if he or she determines, as a result of a complaint, investigation, or as a result of information that he or she receives independent of a complaint or investigation, that:

004.01A The Board has jurisdiction over the parties and subject matter; and

004.01B The alleged violation is serious enough to warrant suspension or revocation of respondent's certificate; or

004.01C The public interest would be served by a formal hearing; or

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004.01D Respondent does not accept an admonishment or reprimand.

004.02 Filing of the Petition. Each petition filed shall be based upon the standards of conduct applicable to the type of certificate (public or nonpublic) held at the time of the alleged unethical or unprofessional conduct regardless of the type of certificate held at the time of the filing of the petition. The petition shall be filed either with the State Board or Professional Practices Commission, as detailed in 004.03 and 004.04, depending upon the type of certificate held at the time of the filing of the petition. The change of a certificate from public to nonpublic or vice versa, at any time after the filing of a petition, shall not affect the jurisdiction of that proceeding.

004.03 Petitions Against Holders of Public School Certificates. The Commissioner may file a petition against a holder of a Nebraska public school certificate with the Commission.

004.03A The form of the petition shall be in accordance with 95 NAC 1.

004.03B Upon the filing of a petition with the Commission, the procedures, rules, and regulations of 95 NAC 1 shall be followed in all contested cases.

004.04 Petitions Against Holders of Nonpublic School Certificates. The Commissioner may file a petition against a holder of a Nebraska nonpublic school certificate with the Board. The form of such petition shall be in writing and shall contain the following information:

004.04A The venue shown as: "BEFORE THE STATE BOARD OF EDUCATION";

004.04B A heading captioned "(Name), COMMISSIONER OF EDUCATION, Petitioner";

004.04C The full name, address, telephone number, and social security number, if known, of the respondent;

004.04D The type, rank, level, endorsements, and expiration dates of certificate(s) held by respondent;

004.04E The name of the school or school district currently employing the respondent;

004.04F A concise statement of facts which the Commissioner believes constitute a violation of professional ethics and practices;

004.04G The provision(s) of statute or rule which are alleged to have been violated.

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004.05 Notice to File Answer. Upon the filing of a petition, the Commissioner shall send the respondent by certified mail, return receipt requested, a copy of the petition and a notice that the respondent has the right to submit an answer within twenty-one (21) days after the receipt of the notice. Mailing by certified mail of any notice required under this chapter shall be to respondent's last known address. In the event the respondent fails to respond to the petition by delivering or posting by certified mail an answer within twenty-one (21) days, respondent's failure shall be considered as a waiver of his or her right to a hearing and shall be cause for holding respondent in default, and a default order may therefore be rendered and a recommendation made to the State Board of Education for determination upon the record without any further notice to respondent.

004.06 Answer. The respondent may file an answer to the petition. A sample answer is included in Appendix C to this chapter. It shall show the venue as "Before the State Board of Education, State of Nebraska" and shall be captioned "Answer." The answer shall contain the following information:

004.06A The name and address of the respondent.

004.06B Specific statements regarding any and all allegations in the petition, which shall be in the form of admissions, denials, explanatory remarks, or statements of mitigating circumstances; and any additional facts or information the respondent deems relevant and which may be of assistance in the ultimate determination of the case.

004.07 Format for Filings. All answers, motions, or other pleadings filed in cases arising under this chapter shall be typewritten on 8 1/2 x 11 inch white three-hole punched paper and shall be accompanied by an original plus two copies. All documents shall contain the title of the proceeding, the case number, the name, address, telephone number, and signature of the person filing the document, and the name of the party on whose behalf the document is filed.

004.08 Filing Location and Service. All filings with the Board or the Commissioner shall be made with the Office of the Commissioner of Education; Nebraska State Department of Education; 301 Centennial Mall South, 6th Floor; P. O. Box 94933; Lincoln, Nebraska 68509. Whenever any party files a document, they shall simultaneously serve copies on the other party(ies). Any documents filed shall contain a certificate attesting to its service by mail, personal delivery, or otherwise. Service by mail shall be deemed completed upon mailing, except as otherwise provided in this chapter.

004.09 Filing Deadlines. When the filing of a pleading or any act required to be done on or before a given date falls on a Saturday, Sunday, or legal holiday on which the Office of the Commissioner is closed, the

pleading or act need not be filed or done until the next succeeding working day that the Office of the Commissioner is open for the transaction of business. All time limits referred to in this chapter shall mean calendar days.

005 Hearings

Outlined in 95 NAC 1-004 are the procedures for hearings before the Commission in cases involving holders of public school certificates. Procedures for hearings on petitions involving nonpublic school certificate holders are as follows:

005.01 Appointment of Hearing Officer. If the petition meets the procedural requirements of this chapter, the Board shall appoint an independent hearing officer, who shall not be a regular employee of the Department, to conduct the hearing and to submit findings of fact, conclusions of law, and a recommended decision to the Board.

005.02 Setting of Hearings. The hearing officer shall set the time and place for any hearing, which shall be at least seven days after the deadline for the filing of answers, unless agreement to set an earlier time is stipulated by petitioner and respondent.

005.03 Consolidation. The hearing officer may order two or more petitions that are legally or factually related to be heard together on a consolidated record, unless any party makes a showing, sufficient to satisfy the hearing officer, that it would be prejudiced thereby.

005.04 Prehearing Conference. If the respondent in his or her answer requests a prehearing conference, the hearing officer shall hold a prehearing conference with the parties. The prehearing conference may be held in person or by telephone. A telephonic prehearing conference may be used at the discretion of the hearing officer. The conference shall be for the purpose of, but not limited to, the following: simplifying the issues, amending the petition or answer, stipulating to the facts, stipulating to a proposed settlement, submission of witness and exhibit lists, identification of exhibits, application for subpoenas, and requests for discovery orders. The hearing officer may hold a prehearing conference upon request of the petitioner or upon his or her own motion if in his or her discretion he or she determines that a prehearing conference is needed.

005.05 Location. The hearing shall be held in Lincoln, Lancaster County, Nebraska, unless, upon joint application and showing by the parties that another location would be more convenient to the parties and witnesses, or upon such independent determination by the hearing officer, the hearing officer may set the hearing outside Lincoln.

005.06 Closed Hearing. Upon specific request of the respondent or petitioner to hold a closed hearing, the hearing officer may hold a closed hearing to prevent the needless injury to any individual.

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005.07 Conduct of Hearings. At the time of hearing:

005.07A The hearing officer designated by the Board to preside at a hearing shall open and close the proceedings, and take appearances. The hearing officer shall rule on motions, objections, and matters of evidence.

005.07B Reasonable opportunity shall be afforded all parties to present evidence and argument. The hearing officer may set reasonable time limits on presentations and arguments.

005.07C Failure of the petitioner or his or her representative, to appear at the time and place set for hearing, unless otherwise allowed by the hearing officer for good cause shown, shall be deemed sufficient grounds for the hearing officer to recommend dismissal of the petition.

005.07D Informal procedures governing the conduct of hearings shall be subject to the discretion and the direction of the hearing officer at the time of such hearings, unless otherwise specified in this chapter.

005.08 Appearances. Any individual may appear on his or her own behalf before the hearing officer; however, an individual may appear on behalf of another in any proceeding before the hearing officer only if:

005.08A He or she is admitted to practice law before the Nebraska Supreme Court, or

005.08B He or she is admitted to practice law before the Supreme Court of any state and is accompanied by a person admitted to practice law before the Nebraska Supreme Court.

005.09 Briefs. Submission of briefs may be required by the hearing officer. If required, the time in which briefs shall be filed will be fixed by the hearing officer at the close of the hearing.

005.10 Record of Proceedings. The hearing officer will ensure that an electronic recording of the hearing shall be made or may have the hearing transcribed by a court reporting service. The cost of obtaining verbatim transcripts from a court reporting service shall be paid directly to such service by the parties requesting the transcripts.

006 Evidence

006.01 General Provisions. As provided in Section 84-914 R.R.S., the hearing officer may admit and give probative effect to evidence which possesses probative value commonly accepted by reasonably prudent men and

women in the conduct of their affairs. He or she shall give effect to the rules of privilege recognized by law. He or she may exclude incompetent, irrelevant, immaterial, and unduly repetitious evidence. The hearing shall be conducted pursuant to the rules of evidence applicable to the district courts, unless mutually waived by the parties.

006.02 Subpoenas, Discovery, and Witnesses. As provided in Section 84-914 R.R.S., the hearing officer may administer oaths, issue subpoenas, compel the attendance of witnesses, and the production of any papers, books, accounts, documents, and testimony, and cause the depositions of witnesses residing either within or without the state to be taken in the manner prescribed by law for taking depositions in civil actions in the district court.

006.02A Subpoenas. The use of subpoenas in proceedings before the hearing officer is governed by statutory procedures for issuance of subpoenas by district courts in Nebraska except as hereinafter provided.

006.02A1 A subpoena requiring the attendance of a witness may be issued by the hearing officer, upon written application of any party.

006.02A2 Subpoenas for the production of accounts, books, documents, or papers, will be issued by the hearing officer only upon written application by a party stating specifically which accounts, books, documents, or papers are required and the facts expected to be proved thereby. All parties directed to produce accounts, books, documents, or papers shall furnish and deliver the same at the time and place specified in the subpoena.

006.02A3 A subpoena issued pursuant to this rule may be served in any manner permitted by law, which shall include service by registered or certified mail, return receipt requested, sent not less than six days prior to hearing.

006.02A4 In the case of disobedience to a subpoena, the hearing officer may invoke the aid of any court of this state in requiring the attendance and testimony of witnesses and the production of accounts, books, documents, or papers.

006.02A5 Charges for serving a subpoena by mail are to be paid prior to the issuance of the subpoena by the party at whose instance the subpoena is issued. Arrangements for personal service, if desired by a party, are to be made by the party requesting such service and they shall be responsible for paying any costs for such service prior to the hearing date.

006.02B Witness Fee. Any witness who is summoned and who responds thereto is entitled to the same fee as is paid for like service in the district courts of Nebraska. Applications made pursuant to this chapter for the attendance of a witness shall be accompanied by a certified check, payable to the order of the witness, and equal in amount to the witness's statutory traveling fee and a fee for one day's attendance at the hearing. Said certified check shall be tendered to the witness when the subpoena is served upon him or her. Additional fees due the witness, if any, shall be paid at the close of the hearing by the party at whose instance the witness is summoned. In addition, Section 25-1228 R.R.S. shall govern subpoenas issued at the request of any agency of state government.

006.02C Discovery. The use of discovery in cases arising under this chapter is governed by the rules promulgated by the Nebraska Supreme Court for discovery in the district courts of Nebraska.

006.03 Offer of Evidence. All evidence shall be offered and made a part of the record in the case. No other factual information or evidence shall be considered in the determination of the case. Documentary evidence may be received in the form of copies or excerpts or by incorporation by reference.

006.04 Cross-Examination. Every party shall have the right of cross-examination of witnesses who testify and shall have the right to submit rebuttal evidence. The hearing officer may limit cross-examination by multiple parties having similar interests.

006.05 Official Notice. The hearing officer may take notice of judicially cognizable fact and in addition may take notice of general, technical, or scientific facts within his or her specialized knowledge. Parties shall be notified either before or during the hearing, or by reference in preliminary reports or otherwise, of the materials so noticed. They shall be afforded an opportunity to contest the facts so noticed. The hearing officer may utilize his or her experience, technical competence, and specialized knowledge in the evaluation of the evidence presented.

006.06 Copies of Evidence. All documentary evidence to be offered at a hearing shall be accompanied by sufficient copies for all parties, unless waived by the hearing officer.

006.07 Stipulations. Parties to any proceeding may agree upon any facts, either by written stipulation entered into the record as an exhibit, or by oral agreement stated on the record; provided, that the hearing officer shall not be irrevocably bound by such stipulation.

006.08 Filing and Serving Exhibits Prior to Hearing. In any proceeding where detailed or complicated exhibits are to be used, the hearing officer

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may require any party to file and serve copies of such exhibits or other necessary information within a specified time in advance of the hearing in order to enable the other party and the hearing officer to study same and prepare cross-examination with references thereto.

007 Disposition of Cases

007.01 Recommendation to the Board. In the absence of an informal disposition, the hearing officer shall prepare an official record for submission to the Board, which shall include the pleadings, testimony transcript, and exhibits from the hearing. The hearing officer shall also submit his or her recommendation as to the disposition of the case and a recommended set of findings of fact and conclusions of law and provide a copy of the recommendations to the parties.

007.02 Final Action by the Board. Procedures for the final review of the case by the Board are contained in 92 NAC 29.

APPENDIX A: Sample Form for Complaint

BEFORE THE COMMISSIONER OF EDUCATION  
STATE OF NEBRASKA

_____ )	
(Name) )	CASE NO. <u>(LEAVE BLANK)</u>
_____ )	
(Address) )	
_____, )	
Complainant, )	
vs. )	COMPLAINT
_____ )	
(Name) )	
_____ )	
(Address) )	
_____, )	
Respondent. )	

In accordance with Title 92, Chapter 28, of the Nebraska Administrative Code, the complainant states as follows:

1. The full name, address, and telephone number of the complainant;
2. The full name, address, and telephone number, if known, of the respondent;
3. A concise statement of the facts which the complainant believes constitute a violation of professional ethics and practices; and
4. The full names, addresses, and telephone numbers of any witnesses able to testify as to the facts alleged.

WHEREFORE, complainant requests that the Commissioner of Education investigate this complaint and take such action as is warranted, including the filing of a petition.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_.

\_\_\_\_\_  
 (Signature)  
 (If attorney for complainant,  
 list address)



APPENDIX B: Sample Form for Petition

BEFORE THE STATE BOARD OF EDUCATION  
STATE OF NEBRASKA

_____ )	
(Name of Commissioner) )	CASE NO. <u>(LEAVE BLANK)</u>
COMMISSIONER OF EDUCATION, )	
_____ )	
(Address) )	
_____ )	
_____ )	
Petitioner, )	
vs. )	PETITION
_____ )	
(Name) )	
_____ )	
(Address) )	
_____ )	
_____ )	
Respondent. )	

Petitioner, in accordance with Title 92, Chapter 28, of the Nebraska Administrative Code, states and alleges as follows:

1. The full name, address, and telephone number of the petitioner;
2. The full name, address, telephone number, and the social security number, if known, of the respondent;
3. The type, rank, level, endorsements, and expiration dates of certificate(s) held by respondent;
4. The name of the school or school district, if any, currently employing the respondent;
5. A concise statement of the facts which the petitioner believes constitute a violation of professional ethics and practices;
6. The full names, addresses, and telephone numbers of any witnesses able to testify as to the facts alleged; and
7. Citation of statute or regulation which was allegedly violated.



APPENDIX C: Sample Answer Form

BEFORE THE STATE BOARD OF EDUCATION  
STATE OF NEBRASKA

_____ )	
(Name of Commissioner) )	
COMMISSIONER OF EDUCATION, )	
_____ )	
(Address) )	CASE NO. _____
_____ )	
Petitioner, )	
vs. )	ANSWER
_____ )	
(Name) )	
_____ )	
(Address) )	
_____ )	
Respondent. )	

COMES NOW respondent, \_\_\_\_\_ (name) \_\_\_\_\_, and, for  
his/her answer to the petition, admits, denies, and alleges as follows:

(Respondent shall include specific statements regarding any and all allegations in the complaint, which shall be in the form of admissions, denials, explanatory remarks, or statements of mitigating circumstances; and any additional facts or information the respondent deems relevant and which may be of assistance in the ultimate determination of the case.)

WHEREFORE, respondent prays that the State Board of Education dismiss the petition in this matter \_\_\_\_\_ (and/or state any additional action sought).

\_\_\_\_\_  
(Signature of respondent or signature  
and address of his or her attorney)



